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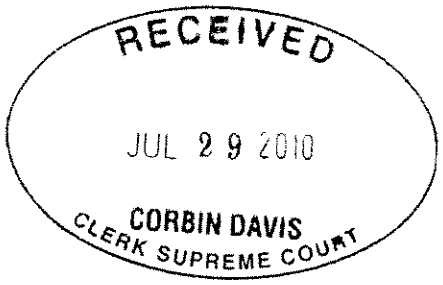


RE: ADM File No. 2002-24

Dear Clerk:

Please provide the following comments to the justices regarding the proposed amendment to MRPC 7.3 (which would require slapping "advertising material" on all advertising by lawyers). The main effect of the proposal would be on direct mail advertising: if the notation is required, many attempted communications will be thrown in the trash unopened; which in turn will dissuade attempts to communicate by direct mail (which indeed seems to be the proposal's intent).

1. Most attorneys are smart enough to recognize advertising when they see it (and if they aren't, they probably shouldn't be attorneys). Consequently, attorney-to-attorney communications should be exempted from the proposed amendment. Indeed, if there were no such exemption, an attorney *responding to an ad* for employment would have to put "advertising material" on the envelope, creating the danger that *responses to want ads* would go into the trash.

2. Where is the need for this proposal? Are people receiving communications they don't recognize as advertising? If so, isn't the solution to prohibit misleading communications, rather than tar all with the fraudfeasor brush?

3. Federal law already regulates what may and may not appear on U.S. mail. Consequently, any attempt by the states to do the same conflicts with, and is preempted by, Federal postal laws.

4. Direct mail is the poor man's advertising. Attempts to limit it therefore amounts to an effort by rich law firms to drive smaller firms out of business. Such an anticompetitive effect violates Federal antitrust laws.

5. The proposal is unconstitutional, since there is no compelling state interest served by the restrictions it imposes on free speech:

a) Requiring an advertising label on the outside of an advertising envelope, by encouraging recipients to throw letters in the trash unopened, will effectively limit mailed advertising to what can fit on the outside of an envelope. The proposal thus severely limits the *quantity* of speech.

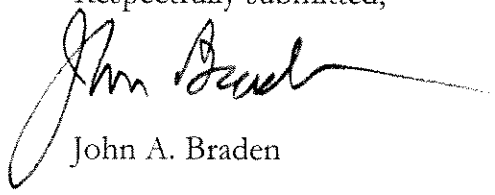
b) Freedom of speech is violated, not only by direct prohibitions on what citizens may say, but also by imposing undue burdens on those attempting to exercise free speech. Conditioning the right to speak on requiring that one accompany his communication with something he'd rather not say is such an undue burden. Indeed, if this proposal were constitutional, so would be a requirement that certain written communications bear a disclaimer, "this is not worth reading," or that certain oral communications be preceded by, "ignore what I'm about to say."

6. The last time the State Bar of Michigan tried to regulate lawyer advertising, it was sued and lost. Does the Supreme Court want a repeat of that?

I find it ironic that, at a time when the economy is reeling, and both Republicans and Democrats mouth support for small business, here we see a proposal that will swell the unemployment rolls with those currently employed by small legal businesses.

For the foregoing reasons, the proposed amendment should be withdrawn.

Respectfully submitted,



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